



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

NOV - 3 2008

Ms. Shari L. McCartney  
P.O. Box 2225  
Fort Lauderdale, FL 33301

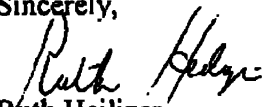
RE: MUR 5517  
Jim Stork for Congress, *et al.*

Dear Ms. McCartney:

This is in reference to the complaint you filed with the Federal Election Commission ("Commission") on August 19, 2004, concerning Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer ("the Committee"), Stork Investments, Inc. d/b/a "Stork's Bakery," and Stork's Las Olas, Inc., (collectively, "Respondents"). After conducting an investigation into this matter, the Commission found there was probable cause to believe that Respondents violated 2 U.S.C. § 441b(a) and that the Committee also violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act, as amended. On October 21, 2008, a conciliation agreement signed by Respondents was accepted by the Commission, thereby concluding the matter. Accordingly, the Commission closed the file in this matter on October 21, 2008.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the conciliation agreement is enclosed for your information. If you have any questions, please contact me at (202) 694-1598.

Sincerely,

  
Ruth Heilizer  
Attorney

Enclosure  
Conciliation Agreement

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

2000 JUL -7 P 4: 31

4 )  
5 James R. Stork )

6 Stork Investments, Inc. d/b/a )

MUR 5517

7 "Stork's Bakery" )

8 Stork's Las Olas, Inc. )

9 Jim Stork for Congress and William C. )

10 Oldaker, in his official capacity as treasurer )  
11

12 **CONCILIATION AGREEMENT**

13  
14  
15 This matter was initiated by a signed, sworn, and notarized complaint by Shari L.

16 McCartney. An investigation was conducted, and the Federal Election Commission

17 ("Commission") found probable cause to believe that James R. Stork, Stork Investments, Inc.

18 d/b/a "Stork's Bakery," Stork's Las Olas, Inc., and Jim Stork for Congress and William C.

19 Oldaker, in his official capacity as treasurer (collectively, "Respondents"), violated 2 U.S.C.

20 § 441b(a) and that Jim Stork for Congress and William C. Oldaker, in his official capacity as

21 treasurer, also violated 2 U.S.C. § 434(b).

22 NOW, THEREFORE, the Commission and the Respondents, having duly entered into  
23 conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

24 I. The Commission has jurisdiction over Respondents and the subject matter of this  
25 proceeding.

26 II. Respondents have had a reasonable opportunity to demonstrate that no action  
27 should be taken in this matter.

28 III. Respondents enter voluntarily into this agreement with the Commission.

29 IV. The pertinent facts in this matter are as follows:

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**Parties**

1. Stork Investments, Inc. d/b/a "Stork's Bakery," and Stork's Las Olas (the "Stork Bakeries"), which are incorporated in Florida, are located in Wilton Manors, Florida and Fort Lauderdale, Florida, respectively.

2. James R. Stork is the president and owner of the Stork Bakeries and was a 2004 candidate for Congress in Florida's 22<sup>nd</sup> Congressional District.

3. Jim Stork for Congress ("the Committee") is the principal campaign committee of James R. Stork, and William C. Oldaker is the Committee's treasurer.

**Coordinated Communications**

4. Under the Federal Election Campaign Act of 1971 ("the Act"), as amended, corporations may not make contributions in connection with a federal election and corporate officers may not consent to such contributions. 2 U.S.C. § 441b(a). Moreover, federal candidates and political committees may not knowingly accept or receive such contributions. *Id.* A contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). Each report filed by a political committee shall disclose the information specified in 2 U.S.C. § 434(b).

5. The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). Under 11 C.F.R. § 109.21, a communication is coordinated if it: (1) is paid for by a person other than the candidate or candidate's committee; (2) satisfies one or more of the four

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1 content standards set forth at 11 C.F.R. § 109.21(c); and (3) satisfies one or more of the six  
2 conduct standards set forth at 11 C.F.R. § 109.21(d).

3 6. At the time relevant to this matter, a communication satisfied the “content”  
4 standard if it was, *inter alia*, a public communication that (i) referred to a clearly identified  
5 candidate for Federal office, (ii) was disseminated within 120 days before an election, and  
6 (iii) was directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R.  
7 § 109.21(c)(4) (2004).

8 7. An advertisement is a “public communication” if it is distributed “by means of any  
9 broadcast, cable, or satellite communication,” or if it is disseminated “by means of any . . .  
10 mass mailing.” 11 C.F.R. § 100.26. “Mass mailing . . . means a mailing of more than 500  
11 pieces of mail of an identical or substantially similar nature within any 30-day period.”  
12 11 C.F.R. § 100.27.

13 8. The definition of “clearly identified candidate” includes, *inter alia*, the name or  
14 photograph of the candidate. 11 C.F.R. § 100.17.

15 9. Communications that meet the conduct standard of section 109.21(d) include, *inter*  
16 *alia*, those with which the candidate is “materially involved” in decisions regarding their  
17 content; intended audience; means or mode; specific media outlets; timing or frequency; the  
18 size or prominence of a printed communication; or duration of communications by means of  
19 broadcast, cable, or satellite. 11 C.F.R. § 109.21(d). *See also* Advisory Opinion 2003-25  
20 (Weinzapfel) (appearance of a U.S. Senator in an advertisement endorsing a mayoral  
21 candidate showed sufficient involvement by the Senator to satisfy the “materially involved”  
22 conduct standard).

1           10. Two cable television advertisements, paid for by the Stork bakeries, ran from June  
2   29, 2004 through July 18, 2004 in portions of Florida's 22<sup>nd</sup> Congressional District, including  
3   the markets of Fort Lauderdale, Pompano Beach, Boca Raton, and Delray Beach. Each  
4   advertisement included the name and an image of the candidate. In each advertisement, the  
5   candidate stated, "I'm Jim Stork. Come find out why Stork's Bakery and Café means quality  
6   you can trust." None of the advertisements stated that Mr. Stork was a candidate and made no  
7   reference to any election. The advertisements featured the products available at the Bakery  
8   and Café with background images of customers seated at tables or standing within the Bakery  
9   and Café premises.

10           11. The television advertisements satisfy the payment standard of section 109.21  
11   because the Stork bakeries paid for them (persons other than the candidate or candidate's  
12   committee); satisfy the content standard of section 109.21 because they were distributed by  
13   cable, clearly identified the candidate by image and name, ran within 120 days before the  
14   August 31, 2004 Florida primary and were broadcast within Florida's 22<sup>nd</sup> Congressional  
15   District; and satisfy the conduct standard of section 109.21 because the candidate appeared in  
16   the advertisements and was otherwise materially involved with them. The voting ballot for  
17   the August 31 primary in the 22<sup>nd</sup> Congressional District of Florida did not contain Mr.  
18   Stork's name, nor the name of any other person for the office of Representative in Congress,  
19   because he was unopposed for the nomination of his political party.

20           12. In addition to the cable television advertisements, the Stork bakeries paid for  
21   approximately 25,500 pieces of direct mail, including coupons, from approximately June 21,  
22   2004 through the end of July 2004. These mailings, which were disseminated within  
23   Florida's 22<sup>nd</sup> Congressional District and which advertised the Stork bakeries, included

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1 photographs of Mr. Stork under which his name was printed. The mailings included location  
2 and business hours information, promoted bakery products, and offered discounts or prizes to  
3 customers who made purchases at the Stork bakeries.

4 13. The direct mailings satisfy the payment standard of section 109.21 because the  
5 Stork bakeries paid for them; satisfy the content standard because they were "mass mailings,"  
6 as defined in 11 C.F.R. § 100.27, clearly identified the candidate by name and photograph,  
7 were disseminated within 120 days before the August 31, 2004 Florida primary, and were  
8 distributed within Florida's 22<sup>nd</sup> Congressional District, and satisfy the conduct standard of  
9 section 109.21 because the candidate was materially involved with them.

10 14. The Stork bakeries spent a total of \$111,791 for their cable television and direct  
11 mail advertising featuring the candidate.

12 **Failure to Report and Misreporting of Candidate Advances**

13 15. A candidate may make unlimited expenditures from personal funds, including  
14 unlimited contributions to his or her campaign. 11 C.F.R. § 110.10; *see* Advisory Opinions  
15 2003-31 and 1997-10. A candidate is an agent of his or her primary campaign committee  
16 when making disbursements in connection with his or her campaign. 2 U.S.C. § 432(e)(2).  
17 Debts and obligations owed by a political committee must be initially disclosed in a timely  
18 manner and must be continuously reported until extinguished. 2 U.S.C. § 434(b)(8);  
19 11 C.F.R. §§ 104.11 and 116.5(c).

20 16. A payment by a candidate from personal funds is a contribution or an expenditure  
21 unless one of two exceptions applies. First, any campaign-related transportation expense, or  
22 any usual and normal subsistence expense incurred while traveling on behalf of a campaign,  
23 that is paid for by an individual on behalf of a candidate and that does not exceed \$1,000 in

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1 aggregate for a single election and is not reimbursed by a campaign, is neither a contribution  
2 nor an expenditure. 2 U.S.C. § 431(8)(B)(iv); 11 C.F.R. §§ 100.79 and 100.139. Second, any  
3 reimbursed campaign-related transportation or transportation-related subsistence expense paid  
4 by a candidate is not a contribution if it is reimbursed by his or her campaign committee  
5 within 30 days from the date the expense was incurred, or if payment was made with a  
6 personal credit card, within 60 days after the closing date of the billing statement on which the  
7 expense first appears. 11 C.F.R. § 116.5(b).

8 17. A transportation-related advance that is not reimbursed within the time limit nor  
9 within the same reporting period, as well any non-travel advances, whether reimbursed in the  
10 same or a different reporting period, are considered to be in-kind contributions. The  
11 committee must report such advances as in-kind contributions in memo entries on Schedule A  
12 when the candidate's payments exceed \$200 in aggregate for the election cycle, and  
13 reimbursement does not bring the amount below \$200 before the end of the reporting period.  
14 11 C.F.R. §§ 104.3(a)(4)(i) and 104.13(a)(1). Reimbursements must be reported as operating  
15 expenditures and, if reimbursements to the candidate exceed \$200 in an election cycle, the  
16 committee must itemize the disbursements on Schedule B, noting the memo entries to which  
17 they relate. In addition, with respect to an untimely-reimbursed travel advance and a non-  
18 travel advance that is made and reimbursed in different reporting periods, the amount of the  
19 advance outstanding at the end of the reporting period must be reported as a debt on Schedule  
20 D if it exceeds \$500 or has been outstanding for more than 60 days. 11 C.F.R. § 104.11; *see*  
21 *also* Advisory Opinions 2003-31 and 1992-1.

22 18. If the total amount reimbursed to the candidate is \$500 or less, the committee  
23 must report the candidate as the payee; but if the total amount exceeds \$500 and payments to

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any one vendor used for the expenses total over \$200 for the election cycle, the committee must report the candidate as the payee and report the payments aggregating over \$200 to any one vendor as memo entries on Schedule B. See Advisory Opinion 1996-20, n .3.

19. In its 2004 October Quarterly Report, Schedule B, the Committee itemized \$17,901.30 in disbursements to Stork. The Committee memo-entried the disbursements as follows: \$418.85 for "Reimbursement--cell phone," \$2,193.09 for "Reimbursement-computer," \$300 for "Reimbursement—field staff food," \$1,271.20 for "Reimbursement—office supplies" and \$13,505.59 for "Reimbursement—travel," for a total of \$17,901.30. The Committee had not previously disclosed the bulk of expenses to which these disbursements related, and those that were disclosed were not properly reported as advances. As untimely-reimbursed travel expenses and non-travel expenses, they should initially have been reported as memo entries on Schedule A and also as debt on Schedule D.

### Violations

V. 1. Respondents contend they acted in good faith and without intent or knowledge that a violation would result. To avoid the costs and distractions of protracted litigation, Respondents James R. Stork (in his capacity as an officer of both corporations and as a federal candidate), Stork Investments, Inc. d/b/a "Stork's Bakery," Stork's Las Olas, Inc., Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer, will not contest the finding of the Commission that they violated 2 U.S.C. § 441b. Respondents will cease and desist from violating 2 U.S.C. § 441b.

2. Respondents Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer, violated 2 U.S.C. 434(b) by failing to properly report certain in-

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1 kind contributions in the form of advances from the candidate, and corresponding debt to the  
2 candidate. Respondents will cease and desist from violating 2 U.S.C. § 434(b).

3 VI. Respondents will pay a civil penalty to the Federal Election Commission in the  
4 amount of Thirty Thousand Dollars (\$30,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

5 **Other Provisions**

6 VII. Respondents Jim Stork for Congress and William C. Oldaker, in his official  
7 capacity as treasurer, will amend the Committee's disclosure reports to comply with the Act  
8 and the Commission's regulations relating to the reporting of receipt of in-kind contributions,  
9 candidate advances, reimbursements paid to a candidate, and debt.

10 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.  
11 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review  
12 compliance with this agreement. If the Commission believes that this agreement or any  
13 requirement thereof has been violated, it may institute a civil action for relief in the United  
14 States District Court for the District of Columbia.

15 IX. This agreement shall become effective as of the date that all parties hereto have  
16 executed same and the Commission has approved the entire agreement.

17 X. Respondents shall have no more than 30 days from the date this agreement  
18 becomes effective to comply with and implement the requirements contained in this  
19 agreement and to so notify the Commission.

20 XI. This Conciliation Agreement constitutes the entire agreement between the parties  
21 on the matters raised herein, and no other statement, promise, or agreement, either written or  
22 oral, made by either party or by agents of either party, that is not contained in this written  
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1

2 agreement shall be enforceable.

3

4 FOR THE COMMISSION:

5 Thomasenia P. Duncan  
6 General Counsel

7

8 BY:



9 Ann Marie Terzaken  
10 Associate General Counsel  
11 for Enforcement

10/31/08  
Date

12 FOR THE RESPONDENTS:

13

14 William C. Oldaker  
15 Counsel to Respondents

16

17

18

19 N. Bradley Litchfield  
20 Counsel to Respondents

7-7-2008  
Date

7-7-2008  
Date

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